



Written by [Kelly Holt](#) on February 22, 2011

Arizona Defends State Commerce Against Feds

Last week, the Arizona State Senate passed a bill, in a 21-8 vote, that could make Arizona the first state to challenge federal overreach into the Interstate Commerce Clause of the U.S. Constitution. It also penalizes federal agents attempting to violate the law. S.B. 1178 states that all goods grown or made in the State, and all services performed within it “are not subject to the authority of Congress under its constitutional power to regulate commerce among the several states.”



Michael Boldin of The Tenth Amendment Center, in writing about Arizona’s bill and resulting [felony charges](#) for violators, said that the U.S. Congress has for decades used “a tortured definition of interstate commerce,” and that Arizona is leading the way to rightfully reclaiming the authority to regulate commerce within its own borders.

The [Tenth Amendment Center](#), based in Los Angeles, is:

.....a national think tank that works to preserve and protect the principles of strictly limited government through information, education, and activism. The center serves as a forum for the study and exploration of state and individual sovereignty issues, focusing primarily on the decentralization of federal government power as required by the Constitution.

The Center is following the Arizona legislation because of the implications for other states.

Boldin wrote that in this matter of commerce, our modern Congress wrongly claims authority:

.....to regulate, control, ban, or mandate virtually everything – from wheat grown on one’s own land for personal consumption, to weed grown in an individual’s own home for the same purpose, to guns manufactured, sold and kept in state boundaries, and everything in between. And, unfortunately, the Supreme Court has largely condoned and even encouraged such reprehensible legislative behavior.

The Interstate Commerce Clause delegates to Congress the power only to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,” but if it means today just what was meant when approved by the ratifiers, we would have a very different application of its intent.

“To regulate” simply meant to “make regular” how an activity may be transacted. “Commerce” meant the “trade and exchange of goods and transportation.” Boldin noted that Congress’ power to regulate interstate commerce meant only that, and did not include matters that have significant spillover effects across state lines. The Founders made a deliberate decision to leave to the states the decision to regulate activities with spillover activity. The power to regulate commerce “across state lines” does



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NOT include non-economic activities or those that are strictly INTRASTATE.

Arizona's new bill also exemplifies the resurgence of understanding James Madison's idea of ["interposition."](#) He said,

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

It was Madison's assertion that states are duty bound to stand between federal encroachment on the rights of a sovereign state. Arizona's law is doing just that, and by way of enforcement, permits fines of up to \$2,000 but doesn't seek jail time for federal agents violating the law. Likewise, any state official attempting to enforce a federal law could face a fine of \$500.

Senator Sylvia Allen, (R) said that the services performed, and products made in the state are defined as including everything from wheat and lettuce to light bulbs and guns, even if manufactured sold and used entirely in Arizona. She crafted most of the bill and is prepared to arrest federal officials if that's what it takes, noting:

If we don't show that we're serious about this, then how is the federal government going to respect us. Instead, they come into our state and they fine us ... and fine our businesses and our farmers.

Arizona has been under the gun lately for its immigration and other laws that would serve to adjust the balance of power back to the state from the federal government. Its example promises that other states claiming their Tenth Amendment rights might be in for the same thing, but also reflects a growing understanding among Americans about their Tenth Amendment. If sufficient understanding is found and used, the sovereign states could regain their rightful powers.

Photo: Arizona State Senate chamber



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